

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Robert Lee Perry, #22631-057,)	C/A NO. 1:11-328-CMC-SVH
)	
Petitioner,)	
)	OPINION and ORDER
v.)	
)	
John R. Owens, Warden FCI Williamsburg,)	
)	
Respondent.)	
_____)	

This matter is before the court on Petitioner's *pro se* application for writ of habeas corpus, filed in this court pursuant to 28 U.S.C. § 2241.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Shiva V. Hodges for pre-trial proceedings and a Report and Recommendation ("Report"). On April 25, 2011, the Magistrate Judge issued a Report recommending that this matter be dismissed without prejudice and without requiring a response from Respondent. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Petitioner filed objections to the Report on May 18, 2011.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After conducting a *de novo* review as to objections made, and considering the record, the applicable law, the Report and Recommendation of the Magistrate Judge, and Petitioners's objections, the court finds that Petitioner's objections are unavailing. Accordingly, the court adopts and incorporates by reference the Report.

Petitioner cites *United States v. Evans*, 159 F.3d 908 (4th Cir. 1998), in support of his argument that he should receive a nunc pro tunc designation. However, *Evans* does not support this argument, nor does this court (contrary to Petitioner's belief) have the authority to "designate a nunc pro tunc designation in Petitioner's case." Obj. at 2 (Dkt. #22, filed May 18, 2011). Therefore, for the reasons noted by the Magistrate Judge, this matter should be dismissed without prejudice.

The petition is dismissed without prejudice and without requiring Respondent to file a return.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
June 1, 2011